

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA121-4088a; FRL-]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;
1990 NO_x Base Year Emission Inventory for the Philadelphia Ozone Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision request that the Commonwealth of Pennsylvania submitted on July 31, 1998 for the Philadelphia severe ozone nonattainment area. The Commonwealth submitted this SIP revision in response to the Clean Air Act, which requires all ozone nonattainment areas to submit a comprehensive inventory of oxides of nitrogen (NO_x) emissions, from all sources, for the calendar year 1990. This emission inventory is known as the 1990 base year inventory. This SIP revision applies to the Pennsylvania portion of the Philadelphia ozone nonattainment area, which consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. EPA is approving the 1990 NO_x base year inventory as a revision to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, we will publish a

timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You can inspect copies of the documents relevant to this action during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, at the EPA Region III address above, or via e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?

What is the effect of this action?

What did Pennsylvania submit?

What is in Pennsylvania's 1990 NOx inventory?

What does the Clean Air Act require?

Where can I get more information?

What is EPA doing in this action?

How does this document comply with the federal administrative requirements for rulemaking?

What action is EPA taking today?

EPA is approving the 1990 NOx base year emission inventory, submitted by the Commonwealth of Pennsylvania for the Pennsylvania portion of the Philadelphia ozone nonattainment area. The inventory revision concerns NOx emissions from point, area, highway mobile, and non-road mobile biogenic emissions in the five-county Philadelphia area.

What is the effect of this action?

EPA's approval of Pennsylvania's 1990 NOx base year inventory means that Pennsylvania has met this Clean Air Act requirement for the Philadelphia area. For more information, see the section entitled, "What does the Clean Air Act require?"

What did Pennsylvania submit?

On July 31, 1998, Pennsylvania submitted a revision to the Pennsylvania State Implementation Plan (SIP) containing the 1990 NOx base year inventory for the Philadelphia severe ozone nonattainment area and the "Phase I" rate-of-progress plan for the Philadelphia area. The Pennsylvania portion of the Philadelphia ozone nonattainment area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. Today's action only pertains to the 1990 NOx base year inventory portion Pennsylvania's July 31, 1998 submittal. In a separate rulemaking action, EPA will address the remainder of Pennsylvania's July 31, 1998 submittal

related to the Philadelphia area Phase I plan.

What is in Pennsylvania's 1990 NOx inventory?

The following table contains a summary of the NOx emission inventory, broken down by source type and county.

1990 Base Year NOx Emissions for the Philadelphia Area					
tons per summer day (tpsd)					
County	Point	Area	Highway	Nonroad	Total
Bucks	15.96	5.36	32.16	13.09	66.57
Chester	26.97	2.84	25.98	11.25	67.04
Delaware	65.51	7.45	18.44	9.23	100.63
Montgomery	7.67	9.13	39.50	20.69	76.99
Philadelphia	45.79	22.34	42.24	17.94	128.31
Five-County Area	161.90	47.12	158.32	72.20	439.54

What does the Clean Air Act require?

Under the Clean Air Act (the Act), States have the responsibility to inventory emissions contributing to national ambient air quality standard nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Section 182(a)(1) of the Act requires states containing ozone nonattainment areas classified as marginal to extreme to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November

15, 1992. This inventory is for calendar year 1990, and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of VOC, NOx, and carbon monoxide (CO) emissions. The inventory is to address actual VOC, NOx, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All emissions from stationary point and area sources, as well as highway and non-road mobile sources, and biogenic emissions within the nonattainment area, are to be included in the compilation. The 1990 base year emissions inventory is the primary inventory from which other Clean Air Act requirements, including the periodic inventory, the rate-of-progress (ROP) target level and projection inventories, and the modeling inventory, are derived.

Where can I get more information?

EPA prepared a technical support document (TSD) for this rulemaking. You may request a copy of EPA's TSD from the EPA Regional Office listed in the **ADDRESSES** section, above.

You can find more information about emission inventories in the following documents:

Emission Inventory Requirements for Ozone State Implementation Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate of Progress Plans, Environmental Protection Agency, Office of Air Quality Planning and

Standards, Research Triangle Park, North Carolina, October 1992

Guidance on the Post '96 Rate-of-Progress Plan (RPP) and Attainment Demonstration (Corrected version of February 18, 1994), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, February 18, 1994.

What is EPA doing in this action?

EPA is approving Pennsylvania's 1990 NOx emission inventory for the Philadelphia area.

Pennsylvania submitted this inventory to EPA as a SIP revision on July 31, 1998.

How does this document comply with the federal administrative requirements for rulemaking?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local,

and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments “to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.” Today’s rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is “economically significant,” as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number

of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to EPA's approval of Pennsylvania's 1990 NOx base year inventory for the five-county Philadelphia area, must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register].

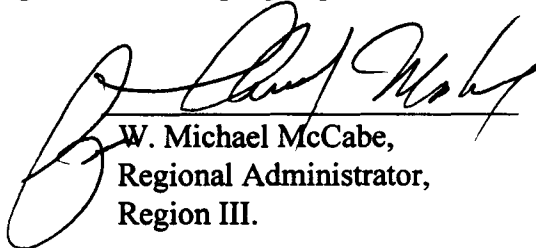
Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

JUN 2 1999

Dated: _____


W. Michael McCabe,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN - Pennsylvania

2. Section 52.2036 is amended by adding paragraph (l) to read as follows:

§ 52.2036 1990 Baseyear Emission Inventory

* * * * *

(l) EPA approves, as a revision to the Pennsylvania State Implementation Plan, the 1990 NO_x emission inventory for the Philadelphia area, submitted on July 31, 1998 by the Pennsylvania Department of Environmental Protection. The submittal consists of 1990 base year point, area, highway, and non-road mobile NO_x emissions inventories for the five-county Philadelphia area (Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties).

BILLING CODE 6560-50-P